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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,432	07/25/2003	Todd Frankel	FRANKELT.PT1	2347

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EXAMINER

HOOK, JAMES F

ART UNIT PAPER NUMBER

3754

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/627,432	Applicant(s) FRANKEL, TODD	
	Examiner James F. Hook	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “air aperture positioned where concentrated fluid passes”, “a valve for allowing air to mix with the concentrate”, “the valve for allowing air to mix with the concentrate is positioned near the exit tube”, and the embodiment having a plurality of concentrates which have “exit tubes larger than the diameter of the diverted fluid flow in the body chamber” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The amendment filed April 17, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the specification is silent on the comparative sizes of the exit tube to "a pathway" and further fails to disclose what the pathway is or would include therefore there is no support for the newly claimed pathway, further there is no disclosure in the specification of either "an air aperture positioned where concentrated fluid passes" or "a valve for allowing air to mix with the concentrate" as well as "the valve for allowing air to mix with the concentrate is positioned near the exit tube", and there likewise is no support in the specification for the multiple exit tubes embodiment having "one or more exit tubes each has a diameter larger than a diameter of the diverted fluid flow in the body chamber". Also, there is no support in the specification that "one of the concentrates is air". This subject matter also cannot be seen in the drawings when it is not clear where the smaller diameter sections lie, and/or the claimed subject matter just is not shown in the drawings at all.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As set forth in the objection above, the amendment filed inserted new matter into the claims which was not supported by the specification as originally filed (see above listing of language that is considered new matter).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 21 recites "one of the concentrates is air" which is indefinite where it is not known how air can be considered a concentrate, the specification states that air may be used in place of water to mix with the concentrates, but there is no suggestion that air is a concentrate as is now claimed, thereby rendering the claim indefinite where the scope of the claim cannot be determined. Since it is

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impossible to ascertain the scope of this claim, no art will be applied to it, however, this is not a suggestion that such is readable over the prior art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-7, 11-14, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armond in view of Fugent and Davidson. The patent to Armond discloses the recited apparatus for separately dispensing clean water and a concentrate solution detachably attached to a water emitting device comprising a body chamber 18, attached to a water emitting device such as a threaded pipe for a shower, a first outlet for exit of normal water flow 16, and a diverter valve 20, a reservoir 84 to hold the concentrated fluid connected to the body chamber, an exit tube for releasing mixed water and concentrate solution 62 having a second outlet 58 for exit of the concentrate solution, a means for attaching the apparatus to the water emitting device 34, 12, 14, concentrate is drawn by from the reservoir through tube 76, a cut off valve for controlling flow of the concentrate 66 is also provided, the water concentrate mix does not contaminate the water only outlet 16, solution is blocked from coming out when the valve is set such that water flows only through first outlet 16 when concentrate cannot be drawn up without water flow through pipe 62, concentrate is drawn out by venturi effect, the reservoir can be refilled through removable cap 88, and where the

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concentrate is a soap, which is at least one concentrate. Also, in figure 2, it appears as if pathway 54 is slightly smaller in diameter than the exit tube 56, however, such is not clearly disclosed. The patent to Armond discloses all of the recited structure with the exception of clearly setting forth that part of the pathway of diverted water flow is sized such that the exit tube has a larger diameter, providing an air aperture or valve positioned where the concentrated fluid passes, and using a button type diverter valve. It is considered an obvious choice of mechanical expedients to utilize any equivalent type of diverter valve including one using a button where such would only require routine skill in the art to use any type of actuation for the valve including a button or a handle. The patent to Fugent discloses that it is old and well known in the art to form at least part of the pathway of diverted water flow mixed with concentrate with a smaller diameter at 46 than an exit tube 49 to create a venturi effect. It would have been obvious to one skilled in the art to modify the venturi in Armond by forming at least part of the pathway of diverted water and concentrate having a diameter sized such that the exit tube is larger in diameter as suggested by Fugent where such would increase the venturi effect allowing for better mixing of the concentrate and water. The patent to Davison discloses that it is old and well known in the art to provide the pathway for concentrate with a vent aperture 66 to assist with the venturi effect. It is considered obvious that such an aperture could be provided with a valve to better control the amount of air allowed in. It would have been obvious to one skilled in the art to modify the venturi in Armond by providing an air aperture, where the addition of a valve to further control the air is considered an obvious choice of mechanical expedients, to aid

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with the venturi effect drawing concentrate from a reservoir as suggested by Davison, where such would improve the venturi effect and allow for better control of concentrate and amounts that get mixed.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armond in view of Fugent and Davison as applied to claims 1-3, 5-7, 11-14, and 16-19 above, and further in view of Williams. The patent to Armond as modified discloses all of the recited structure with the exception of providing means to attach the apparatus to a faucet. The patent to Williams discloses that it is old and well known in the art to provide a dispenser for connection to a faucet including O-rings 26, where such is also used with a shower type element C. It would have been obvious to one skilled in the art to modify the connection in Armond as modified to allow for connection to a faucet as suggested by Williams as such would allow for greater diversity and make the apparatus more useful when such could be used in a shower or a sink thereby saving the user money by allowing the apparatus to be used on other fixtures.

Claims 8, 9, 15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armond in view of Fugent and Davison as applied to claims 1-3, 5-7, 11-14, and 16-19 above, and further in view of Smith. The patent to Armond as modified discloses all of the recited structure with the exception of providing a plurality of separate valves, reservoirs, concentrates and outlets for a plurality of concentrated fluids, and providing flow adjuster valves, although the extra valve of Armond 66 could be considered an adjuster valve between concentrate flow and no concentrate flow. The patent to Smith discloses that it is old and well known to provide shower head

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dispensing fixtures with a plurality of concentrates provided with a plurality of reservoirs for the concentrates (figs 4 and 5), valves for control of concentrate flow 22-24, diverter valve 20 for water control. It would have been obvious to one skilled in the art to provide Armond as modified with a plurality of concentrates and reservoirs and to provide a plurality of flow control valves for each to control the flow of concentrate, as suggested by Smith where such would allow for a plurality of mixed concentrates rather than one which would increase the usefulness of the article and would save money. Providing a plurality of exit tubes are merely a duplication of parts, and based on the teachings of Armond of a separate outlet for the mixture from the normal water outlet, providing a plurality of outlets would allow for the same prevention of mixing the clean water with the concentrate mixture, where one skilled in the art would require only routine skill to provide a plurality of outlets as such is a mere duplication of parts.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Armond in view of Fugent and Davison as applied to claims 1-3, 5-7, 11-14, and 16-19 above, and further in view of O'Hare. The patent to Armond as modified discloses all of the recited structure with the exception of providing a filter with the apparatus. The patent to O'Hare discloses that it is old and well known to provide shower mixing and dispensing apparatus with a filter 192, and to form the reservoirs as seen in figure 3 which shows a threaded connection, that the reservoirs can be removable and therefore disposable. It would have been obvious to one skilled in the art to modify the apparatus in Armond as modified by providing a filter to prevent sediment from getting in the

apparatus, as suggested by O'Hare where such would prevent failure and save replacement costs of the apparatus.

Response to Arguments

Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Cleland disclosing a state of the art dispenser for mixed fluids.

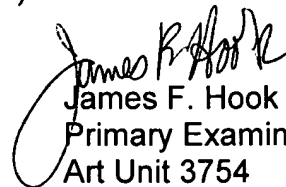
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


James F. Hook
Primary Examiner
Art Unit 3754

JFH